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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CANDICE BRUNELLE and SEAN
BRUNELLE.

20 | Plaintiffs,

21 | v.

22 | SAFECO INSURANCE COMPANY
23 | OF AMERICA; and DOES 1 through
50, inclusive.

24 Defendants..

Case No. CV17-04725-ODW(AGRx)

Judge: Hon. Otis D. Wright
Magistrate: Hon. Alicia G. Rosenberg

STIPULATED PROTECTIVE ORDER

DISCOVERY MATTER

Complaint Filed: May 9, 2017
Date Removed: June 27, 2017
Trial Date: July 31, 2018

1 Plaintiffs, Candice Brunelle and Sean Brunelle (collectively,
2 "Plaintiffs"), and Defendant, Safeco Insurance Company of America ("Safeco"), by
3 and through their counsel of record, and under Rules 26(c) and 29(b) of the Federal
4 Rules of Civil Procedure and Local Rule 7-1, have entered into this stipulation, and
5 hereby request this Court's entry of the following Protective Order:

6

7 I.

8 **PURPOSES AND LIMITATIONS**

9 A. **Introduction.**

10 Discovery in this action is likely to involve production of confidential,
11 proprietary, or private information for which special protection from public
12 disclosure and from use for any purpose other than prosecuting this litigation may
13 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
14 enter this Stipulated Protective Order. The parties acknowledge that this Order does
15 not confer blanket protections on all disclosures or responses to discovery, and that
16 the protection it affords from public disclosure and use extends only to the limited
17 information or items that are entitled to confidential treatment under applicable legal
18 principles. The parties also acknowledge, as set forth in Section II.K.3, that:

19 (1) this Stipulated Protective Order does not entitle them to file confidential
20 information under seal; and (2) Civil Local Rule 79-5 sets forth the procedures that
21 must be followed and the standards that will be applied when a party seeks
22 permission from the court to file material under seal.

23

24 B. **Brief Statement of this Action.**

25 On May 9, 2017, Plaintiffs filed a Complaint against Safeco for
26 (1) breach of the implied covenant of good faith and fair dealing, and (2) breach of
27 contract, in the matter titled *Brunelle v. Safeco Insurance Company of America*,

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1 originally filed in Los Angeles Superior Court, Case No. MC027125 (the
2 "Lawsuit"). Safeco removed the Lawsuit to this Court on June 27, 2017.

3 Plaintiffs are the parents of decedent Justin Brunelle, who was a
4 passenger in a vehicle driven by Gabriel Smith and owned by Gabriel's parents,
5 William and Beverly Smith, when the vehicle crashed on July 28, 2014 (the
6 "Accident"). Justin Brunelle, then 20 years old, died on August 2, 2014, as a result
7 of injuries sustained in the Accident.

8 At the time of the Accident, all of the Smiths were insured under
9 Safeco automobile policy number A2467289 (the "Policy"). Plaintiffs contend that
10 they made a Policy limits settlement demand to Safeco on August 21, 2014 (the
11 "Settlement Demand"), which Safeco did not accept. Plaintiffs thereafter filed a
12 wrongful death action against all of the Smiths. With Safeco's consent, Plaintiffs
13 and the Smiths settled that action in December of 2016 under the following terms:
14 (1) the dismissal of Plaintiffs' claims against William and Beverly Smith with
15 prejudice; (2) the entry of a \$1.25 million judgment against Gabriel Smith (the
16 "Stipulated Judgment"); and (3) an assignment of Gabriel Smith's rights against
17 Safeco to Plaintiffs, in exchange for a covenant not to execute the Stipulated
18 Judgment against Gabriel Smith's assets. Plaintiffs then filed this Lawsuit against
19 Safeco, alleging claims for breach of contract and bad faith.

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21 **C. Good Cause Exists for the Issuance of a Protective Order to Protect**
22 **Proprietary, Confidential, Business-Sensitive Information.**

23 Based on discovery requests to date, and the conference of counsel
24 under Rule 26(f), discovery in this action will involve trade secrets, and other
25 commercial, financial, and/or proprietary information, as well as personal medical
26 information, for which protection from public disclosure and from use for any
27 purpose other than the prosecution and defense of this action is warranted. Such
28 confidential and proprietary materials and information consist of, among other

1 things: (i) confidential information regarding employee training; (ii) confidential
2 and proprietary information regarding business practices, policies and procedures;
3 (iii) confidential information regarding personal medical issues; and (iv) information
4 which may otherwise be privileged or protected from disclosure under state or
5 federal statutes, court rules, case decisions, or common law.

6 By way of example, Plaintiffs have requested documents regarding:
7 (i) Safeco's training materials used by adjusters who handled the claim; (ii) Safeco's
8 claims handling policies and procedures in use at the time of the claim; (iii) Safeco's
9 claim file documents, which include medical and other personal information;
10 (iv) communications pertaining to the claim, and (v) Safeco's setting of reserves on
11 the claim. These requests seek information that Safeco contends is confidential, and
12 disclosure without a Protective Order places Safeco at risk of substantial
13 competitive and/or financial harm.

14 Accordingly, to expedite the flow of information, to facilitate the
15 prompt resolution of disputes over confidentiality of discovery materials, to
16 adequately protect information the parties are entitled to keep confidential, to ensure
17 that the parties are permitted reasonable necessary uses of such material in
18 preparation for and in the conduct of trial, to address their handling at the end of the
19 litigation, and serve the ends of justice, a protective order for such information is
20 justified in this matter. The parties intend that information will not be designated as
21 confidential for tactical reasons and that nothing be so designated without a good
22 faith belief that it has been maintained in a confidential, non-public manner, and
23 there is good cause why it should not be part of the public record of this case.

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III.

STIPULATED PROTECTIVE ORDER

3 A. Definitions. The following definitions apply to terms used in this
4 Protective Order.

1. Lawsuit: This pending lawsuit.
 2. Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.
 3. “CONFIDENTIAL” Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.
 4. Counsel: Outside Counsel of Record and In-House Counsel (as well as their support staff).
 5. Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”
 6. Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.
 7. Expert: Any person with specialized knowledge or experience in a matter pertinent to this Lawsuit who has been retained by a Party or its Counsel to serve as an expert witness or as a consultant in this Lawsuit.
 8. In-House Counsel: Attorneys who are employees of a Party to this Lawsuit. In-House Counsel does not include Outside Counsel of Record or any other outside counsel.
 9. Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Lawsuit.

1 10. Outside Counsel of Record: Attorneys who are not employees of
2 a Party to this Lawsuit, but are retained to represent or advise a Party to this Lawsuit
3 and have appeared in this Lawsuit on behalf of that Party, or are affiliated with a law
4 firm which has appeared on behalf of that Party, including support staff.

5 11. Party: Any party to this Lawsuit, including all of his/her/its
6 officers, directors, employees, consultants, retained experts, and Outside Counsel of
7 Record (including support staff).

8 12. Producing Party: A Party or Non-Party that produces Disclosure
9 or Discovery Material in this Lawsuit.

10 13. Professional Vendors: Persons or entities that provide litigation
11 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 14. Protected Material: Any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL.”

16 15. Receiving Party: A Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18
19 B. Scope.

20 The protections conferred by this Stipulated Protective Order cover not
21 only Protected Material (as defined above), but also (1) any information copied or
22 extracted from Protected Material; (2) all copies, excerpts, summaries, or
23 compilations of Protected Material; and (3) any testimony, conversations, or
24 presentations by a Party or its Counsel that might reveal Protected Material.
25 Any use of Protected Material at trial shall be governed by the orders of the trial
26 judge. This Order does not govern the use of Protected Material at trial.

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1 C. **Duration.**

2 Even after final disposition of this Lawsuit, the confidentiality
3 obligations imposed by this Order shall remain in effect until a Designating Party
4 agrees otherwise in writing or a court order otherwise directs. Final disposition shall
5 be deemed to be the later of (1) dismissal of all claims and defenses in this Lawsuit,
6 with or without prejudice and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Lawsuit,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

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11 D. **Designating Protected Material.**

12 1. **Exercise of Restraint and Care in Designating Material for**
13 **Protection.** Each Party or Non-Party that designates information or items for
14 protection under this Order must take care to limit any such designation to specific
15 material that qualifies under the appropriate standards. The Designating Party must
16 designate for protection only those parts of material, documents, items, or oral or
17 written communications that qualify so that other portions of the material,
18 documents, items, or communications for which protection is not warranted are not
19 swept unjustifiably within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited.
21 Designations that are shown to be clearly unjustified or that have been made for an
22 improper purpose (e.g., to unnecessarily encumber the case development process or
23 to impose unnecessary expenses and burdens on other parties) may expose the
24 Designating Party to sanctions.

25 If it comes to a Designating Party's attention that information or items
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.

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1 2. Manner and Timing of Designations. Except as otherwise
2 provided in this Order, or as otherwise stipulated or ordered, Disclosure or
3 Discovery Material that qualifies for protection under this Order must be clearly so
4 designated before the material is disclosed or produced. Designation in conformity
5 with this Order requires:

6 a. For information in paper or electronic documentary form,
7 the Producing Party shall affix the legend - - “CONFIDENTIAL” (hereinafter
8 “CONFIDENTIAL legend”) - - to each page that contains protected material. If
9 only a portion or portions of the material on a page qualifies for protection, the
10 Producing Party must clearly identify the protected portion(s) by, for example,
11 making appropriate markings in the margins.

12 A Party or Non-Party that makes original documents available for
13 inspection need not designate them for protection until after the inspecting Party has
14 indicated which documents it would like copied and produced. During the
15 inspection and before the designation, all of the material made available for
16 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
17 identified the documents it wants copied and produced, the Producing Party must
18 determine which documents, or portions thereof, qualify for protection under this
19 Order. Then, before producing the specified documents, the Producing Party must
20 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.
21 If only a portion or portions of the material on a page qualifies for protection, the
22 Producing Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins).

24 b. For testimony given in depositions, the Designating Party
25 shall identify all Protected Material either (i) on the record, before the close of the
26 deposition, or (ii) as soon as reasonably practicable after receipt of the transcript, by
27 marking the Protected Material in accordance with subparagraph a. above and

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1 notifying any other party and/or recipient of any copy of the transcript about the
2 designations made.

3 c. For tangible items, or information produced in some form
4 other than documentary, that the Producing Party affix in a prominent place on the
5 exterior of the container or containers in which the information is stored the legend
6 "CONFIDENTIAL." If only a portion or portions of the information warrants
7 protection, the Producing Party, to the extent practicable, shall identify the protected
8 portion(s).

9 3. Inadvertent Failures to Designate. If timely corrected, an
10 inadvertent failure to designate Protected Material does not, standing alone, waive
11 the Designating Party's right to secure protection under this Order. Upon timely
12 correction of a designation, the Receiving Party must make reasonable efforts to
13 assure that such Protected Material is treated in accordance with the provisions of
14 this Order.

15

16 E. Challenging Confidentiality Designations.

17 1. Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time that is consistent with the Court's
19 Scheduling Order.

20 2. Meet and Confer. The Challenging Party shall initiate the
21 dispute resolution process under Local Rule 37.1 et seq.

22 3. The burden of persuasion in any such challenge proceeding shall
23 be on the Designating Party. Frivolous challenges, and those made for an improper
24 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
25 parties) may expose the Challenging Party to sanctions. Unless the Designating
26 Party has waived or withdrawn the confidentiality designation, all parties shall
27 continue to afford the Protected Material in question the level of protection to which
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1 it is entitled under the Producing Party's designation until the Court rules on the
2 challenge.

3

4 **F. Access to and Use of Protected Material.**

5 1. Basic Principles. A Receiving Party may use Protected Material
6 that is disclosed or produced by another Party or by a Non-Party in connection with
7 this Lawsuit only for prosecuting, defending, or attempting to settle this Lawsuit.
8 Such Protected Material may be disclosed only to the categories of persons and
9 under the conditions described in this Order. When the Lawsuit has been
10 terminated, a Receiving Party must comply with the provisions of Section L below
11 (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party
13 at a location and in a secure manner that ensures that access is limited to the persons
14 authorized under this Order.

15 2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
16 otherwise ordered by the court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose Protected Material only to:

18 a. the Receiving Party's Outside Counsel of Record in this
19 Lawsuit, as well as employees of said Outside Counsel of Record to whom it is
20 reasonably necessary to disclose the information for this Lawsuit;

21 b. the officers, directors, and employees (including In-House
22 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
23 Lawsuit;

24 c. Experts (as defined in this Order) of the Receiving Party to
25 whom disclosure is reasonably necessary for this Lawsuit and who have signed the
26 "Acknowledgment and Agreement to Be Bound" ("Acknowledgement Form")
27 attached as Exhibit A to this Stipulated Protective Order;

28 d. the Court and its personnel;

1 e. Court reporters and their staff;
2 f. professional jury or trial consultants, mock jurors, and
3 Professional Vendors to whom disclosure is reasonably necessary for this Lawsuit
4 and who have signed a copy of the Acknowledgment Form;
5 g. the author or recipient of a document containing the
6 Protected Material or a custodian or other person who otherwise possessed or knew
7 the Protected Material;
8 h. during their depositions, witnesses, and attorneys for
9 witnesses, in the Lawsuit to whom disclosure is reasonably necessary provided:
10 (1) the deposing party requests that the witness sign the Acknowledgement Form;
11 and (2) they will not be permitted to keep any Protected Material unless they sign
12 the Acknowledgement Form, or unless otherwise agreed by the Designating Party or
13 ordered by the court. Pages of transcribed deposition testimony or exhibits to
14 depositions that reveal Protected Material may be separately bound by the court
15 reporter and may not be disclosed to anyone except as permitted under this
16 Stipulated Protective Order; and
17 i. any mediator or settlement officer, and their supporting
18 personnel, mutually agreed upon by any of the parties engaged in settlement
19 discussions.

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21 **G. Protected Material Subpoenaed or Ordered Produced in Other**
22 **Litigation.**

23 If a Party is served with a subpoena or a court order issued in other
24 litigation that compels disclosure of any Protected Material, that Party must:

- 25 a. promptly notify in writing the Designating Party. Such
26 notification shall include a copy of the subpoena or court order;
27 b. promptly notify in writing the party who caused the
28 subpoena or order to issue in the other litigation that some or all of the material

H. Non-Party Protected Material Sought in This Lawsuit.

15 1. The terms of this Order are applicable to information produced
16 by a Non-Party in this Lawsuit and designated as “CONFIDENTIAL.” Such
17 Protected Material produced by Non-Parties in connection with this litigation is
18 protected by the remedies and relief provided by this Order. Nothing in these
19 provisions should be construed as prohibiting a Non-Party from seeking additional
20 protections.

21 2. In the event that a Party is required, by a valid discovery request,
22 to produce a Non-Party's Protected Material in its possession, and the Party is
23 subject to an agreement with the Non-Party not to produce the Non-Party's
24 Protected Material, then the Party shall:

25 a. promptly notify in writing the Requesting Party and the
26 Non-Party that some or all of the information requested is subject to a
27 confidentiality agreement with a Non-Party;

4 c. make the information requested available for inspection by
5 the Non-Party, if requested.

6 3. If the Non-Party fails to seek a protective order from this court
7 within 14 days of receiving the notice and accompanying information, the Receiving
8 Party may produce the Non-Party’s confidential information responsive to the
9 discovery request. If the Non-Party timely seeks a protective order, the Receiving
10 Party shall not produce any information in its possession or control that is subject to
11 the confidentiality agreement with the Non-Party before a determination by the
12 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
13 expense of seeking protection in this court of its Protected Material.

I. Unauthorized Disclosure of Protected Material.

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify the Designating Party in writing of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the Acknowledgment Form.

J. Inadvertent Production of Privileged or Protected Material.

When a Producing Party gives notice to a Receiving Party that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
2 procedure may be established in any e-discovery order that provides for production
3 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
4 (e), insofar as the parties reach an agreement on the effect of disclosure of a
5 communication or information covered by the attorney-client privilege or work
6 product protection, the parties may incorporate their agreement in the stipulated
7 protective order submitted to the court.

8

9 **K. Miscellaneous.**

10 1. Right to Further Relief. Nothing in this Order abridges the right
11 of any person to seek its modification by the Court in the future.

12 2. Right to Assert Other Objections. By stipulating to the entry of
13 this Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 3. Filing Protected Material. A Party that seeks to file under seal
18 any Protected Material must comply with Civil Local Rule 79-5. Protected Material
19 may only be filed under seal pursuant to a court order authorizing the sealing of the
20 specific Protected Material at issue. If a Party's request to file Protected Material
21 under seal is denied by the court, then the Receiving Party may file the information
22 in the public record unless otherwise instructed by the court.

23

24 **L. Violations.**

25 Any violation of this Order may be punished by any and all appropriate
26 measures, including contempt proceedings and/or monetary sanctions.

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28

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
2

3 Dated: October 25, 2017
4

5 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
6

7 By _____ /s/ *David Dworsky*
8 FRANK FALZETTA
DAVID DWORSKY
9 Attorneys for Defendant
SAFECO INSURANCE COMPANY
OF AMERICA
10

Dated: October 25, 2017
11

PARRIS LAW FIRM
12

13 By _____ /s/ *Daniel Eli*
14 JASON P. FOWLER
DANIEL ELI
15 Attorneys for Plaintiffs
CANDICE BRUNELLE and SEAN BRUNELLE
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17

18 **ATTESTATION**
19

20 Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby attest that all
21 signatories listed above, and on whose behalf this filing is submitted, concur in the
22 filing's content and have authorized the filing.
23

Executed this 25th day of October, 2017 at Los Angeles, California.
24

By _____ /s/ *David Dworsky*
DAVID DWORSKY
25

26 IT IS SO ORDERED.
DATED: 10/30/2017
27 
28 UNITED STATES MAGISTRATE JUDGE